



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00AY/LDC/2018/0163**

**Property** : **Trinity Close The Pavement London  
SW4 0JD**

**Applicant** : **Trinity Close Limited**

**Representative** : **Ringley Law**

**Respondent  
leaseholders** : **Various leaseholders as per the  
application**

**Representative** : **-**

**Type of application** : **To dispense with the consultation  
requirements under S.20 Landlord  
and Tenant Act 1985**

**Tribunal member(s)** : **Mrs E Flint DMS FRICS**

**Date and venue of  
determination** : **31 October 2018  
10 Alfred Place London WC1E 7LR**

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**DECISION**

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## **Decision of the tribunal**

- (1) The Tribunal grants dispensation from all of the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in relation to the works required to deal with the spalling concrete areas of the balconies on the front elevation of the Building.

## **The Background**

1. The application under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") was made by Ringley Law, on behalf of the applicants on 24 September 2018.
2. The application concerned emergency works to the balconies on the front elevation of the building where spalling concrete posed a health and safety risk for residents, guests and members of the public.
3. Directions were issued on 1 October 2018 requiring the applicant to prepare bundles by 22 October to include statements
  - (i) Setting out the full grounds for the application, including all of the documents on which the landlord relies, a copy of the lease and copies of any replies from the tenants;
  - (ii) The Leaseholders were asked to confirm by 15 October 2018 whether or not they would give their consent to the application.
  - (iii) In the event that such agreement was not forthcoming the leaseholders were to state why they opposed the application; and provide copies of all documents to be relied upon.
4. No responses were received from the leaseholders.
5. The lessees were informed in the Directions issued by the Tribunal that the question of reasonableness of the works or cost was not included in this application, the sole purpose of which is to seek dispensation.

## **The Evidence**

6. Trinity Close is a purpose built block built in 1977 of 39 flats and 20 garages.
7. The contract Administrator for other major works, for which full consultations had been carried out, identified areas of spalling concrete

to the balconies on the front elevation which required both emergency preliminary and permanent repairs.

8. The preliminary works consisted of securing the said concrete areas, sampling and undertaking repairs via abseil to the front elevation of the building. Permanent repairs included reinforcing the damaged areas by applying reinforcement protection and bonding bridge primer and concrete repair mortar.
9. Three estimates were obtained ranging from £7,905 + VAT to £12,781.60 + VAT. The contract was awarded to the contractor who had provided the lowest quote. Emergency repairs were carried out thereafter. A final report detailing the sample results and locations is due to be supplied shortly.
10. The Applicant is the Freehold and Management Company of the Property whose shareholders and directors are the Respondents themselves.
11. By clause 3(2) of the leases of the flats at the Property the Applicant has covenanted to "*maintain and keep in good and substantial repair and condition and (where necessary) renew:*
  - a. *The main structure of the Building including .....the exterior walls and foundations and the roofs thereof .....*
  - b. *All other parts of the Building ... in this or or in the demise of any other flat in the Building PROVIDED ALWAYS and it is hereby agreed that 2repair" for the purposes of the sub-clause includes the rectification or making good any defect in the foundations or structure of the Building notwithstanding that it is inherent or due to the original design of the Building"*
12. The Balconies are not demised to the flats under the Second Schedule of the Leases.
13. The Applicant states that in the light of the substantial health and safety risk of falling masonry arising from the spalling of the concrete parts of the balconies and given the Applicants' covenants in the Leases, there was not time to carry out the full consultation process provided for by section 20 of the Landlord and Tenant Act 1985.
14. The Applicant further submits that the Respondents have not suffered any prejudice resulting from the lack of consultation, *Daejan Investments Ltd v Benson & Ors [2013] UKSC 14*. Eliminating an

imminent danger cannot be described prejudicial. Moreover three estimates were obtained and the contract awarded to the Contractor awarded to the Contractor who provided the most competitive estimate.

15. The applicant confirmed that a copy of the Application had been sent to each lessee and that a copy had been displayed in the common parts. No objections or negative comments had been received from any of the lessees.

### **The Decision**

16. The relevant test to be applied in an application for dispensation was set out by the Supreme Court in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the section 20 consultation procedure was to protect tenants from paying for inappropriate works or paying an inappropriate amount. Dispensation should not result in prejudice to the tenant.
17. The Tribunal determines from the evidence before it that the works were necessary, were required to be completed as soon as possible and that no prejudice to the lessees has been demonstrated or asserted.
18. On the evidence before it, and in these circumstances, the Tribunal considers that the application for dispensation be granted.

**Name:** Evelyn Flint

**Date:** 31 October 2018

## ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.